

Legislative Council—No 115

As introduced and read a first time, 18 October 2005

South Australia

Public Finance and Audit (Auditor-General's Powers) Amendment Bill 2005

A BILL FOR

An Act to amend the *Public Finance and Audit Act 1987*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Public Finance and Audit (Auditor-General's Powers) Amendment Act 2005*.

5 2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

10 Part 2—Amendment of *Public Finance and Audit Act 1987*

4—Amendment of section 24—Appointment of Auditor-General

- (1) Section 24(2)—after "by the Governor" insert:

on a recommendation made by resolution of both Houses of Parliament

(2) Section 24—after subsection (2) insert:

(2a) On a vacancy occurring in the office of Auditor-General, the matter of enquiring into and reporting on a suitable person for appointment to the vacant office is referred by force of this subsection to the Statutory Officers Committee established under the *Parliamentary Committees Act 1991*.

(3) Section 24(6)—delete "is not subject to the direction of any person" and substitute:

is an independent statutory officer who is not subject to the direction of any person, body or authority

(4) Section 24—after subsection (6) insert:

(7) Subsection (6) does not limit or derogate from the powers or privileges of either House of Parliament, or of a Committee of the Parliament under the *Parliamentary Committees Act 1991*, and the Auditor-General must comply with any relevant requirement imposed under or by virtue of those powers or privileges.

5—Amendment of section 31—Audit of public accounts etc

Section 31(2)—after "uses its resources" insert:

and may consider and report on any other matter that is relevant to the proper management or use of public money or that should, in the opinion of the Auditor-General, be examined in the public interest

6—Amendment of section 32—Examination of publicly funded bodies and projects

(1) Section 32(1)(a) and (b)—delete paragraphs (a) and (b) and substitute:

(a) examine the accounts of a publicly funded body and any matter associated with—

(i) the governance or financial management of the publicly funded body; or

(ii) the efficiency and economy of the publicly funded body in the conduct of its affairs; or

(iii) the operations or activities of the publicly funded body insofar as this may be relevant to the proper management or use of public money; or

(b) examine accounts relating to a publicly funded project and any matter associated with—

(i) the financial management of the project; or

(ii) the efficiency and cost-effectiveness of the project; or

(iii) any outcomes or activities arising from, or connected with, the management or use of public money; or

(c) examine any other matter relating or relevant to public finances or to the management or use of public resources.

(2) Section 32(1a)—delete "the body or project" and substitute—
a body, project or activity

(3) Section 32—after subsection (1a) insert:

(1b) The Treasurer must give public notice of a request under subsection (1) by publishing in the Gazette, within 14 days after making the request, a notice that sets out—

(a) the date on which the request was made; and

(b) the name of the publicly funded body or publicly funded project to which the relevant examination relates.

(1c) The Auditor-General may undertake and conduct an examination in such manner as the Auditor-General thinks fit and, without limiting any other power, may set time limits and impose other requirements and, in the event of non-compliance with any such time limit or requirement, make any determination, draw any conclusion or take any other step as the Auditor-General thinks fit.

(1d) Any proceedings calling into question or challenging an act or omission of the Auditor-General in connection, or purported connection, with the performance or exercise of a function or power associated with an examination must be commenced within 28 days after the day on which the person commencing the proceedings first had notice of the act or omission.

(1e) For the purposes of subsection (1d), a person will be presumed to have notice of an act or omission at the time he or she might reasonably be expected to have had such notice.

(4) Section 32(2)—after "results of the examination" insert:

and containing such material and addressing such other matters as the Auditor-General thinks fit

7—Amendment of section 33—Audit of other accounts

(1) Section 33(2)—after "carries out those functions" insert:

and may consider and report on any other matter that is relevant to the proper management or use of public money or that should, in the opinion of the Auditor-General, be examined in the public interest

(2) Section 33(4)—after "carries out those functions" insert:

and may consider and report on any other matter that is relevant to the proper management or use of public money or that should, in the opinion of the Auditor-General, be examined in the public interest

(3) Section 33(6)—after "conducts its affairs" insert:

and consider and report on any other matter that is relevant to the proper management or use of public money or that should, in the opinion of the Auditor-General, be examined in the public interest

(4) Section 33(7)—delete the subsection and substitute:

(7) The Auditor-General must act under subsection (6) if requested to do so by the Treasurer.

8—Amendment of section 34—Powers of the Auditor-General to obtain information

(1) Section 34(1)—after "make an examination" insert:

or report

(2) Section 34(1)(c)—delete "the audit or examination" and substitute:

performance of a function under this Act

(3) Section 34(1)(d)—delete "or examination" wherever occurring and substitute in each case:

, examination or other matter

(4) Section 34(1)(e)(iii)—after "public authority" wherever occurring insert:

or other relevant body

(5) Section 34(2)(f)—delete "\$5 000" and substitute:

\$10 000

9—Amendment of section 37—Recommendations relating to public authorities

Section 37(1)—delete "a matter that has come to the attention of the Auditor-General in the course of an examination of the efficiency and economy with which a public authority uses its resources" and substitute:

a matter concerning the way in which a public authority has used, or is using, its resources

10—Repeal of section 38

Section 38—delete the section

11—Insertion of Division 7

After section 39 insert:

Division 7—Related matters

39A—Power to make related findings

The Auditor-General may, in connection with an audit or examination under this Part—

- (a) make findings as to the conduct of any person or body; and
- (b) make findings of fact or law; and
- (c) consider and report on any other matter that, in the opinion of the Auditor-General, is related or relevant to the audit or examination or that, in the opinion of the Auditor-General, should be considered and addressed in the public interest.

39B—Publication of reports and other documents

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- (1) When the President of the Legislative Council and the Speaker of the House of Assembly receive a report or other documents from the Auditor-General under this Part, the President and Speaker must—
- (a) immediately cause the report or documents to be published; and
- (b) lay them before their respective Houses at the earliest opportunity.
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- (2) If the President of the Legislative Council or the Speaker of the House of Assembly is absent at the time the Auditor-General delivers to Parliament a report or other document under this Part, the Clerk of the relevant House will receive the report or document on behalf of the President or Speaker (as the case may be) (and the report or document will then be taken to have been received by the President or the Speaker).
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- (3) If a report or other document is received by the President of the Legislative Council or the Speaker of the House of Assembly at a time when Parliament is not sitting, the report or document will be taken to have been published under subsection (1)(a) at the expiration of one clear day after the day of receipt of the report or document.
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- (4) A report or document will, when published under subsection (1)(a), be taken for the purposes of any other Act or law to be a report of the Parliament published under the authority of the Legislative Council and the House of Assembly.
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Schedule 1—Transitional provisions

1—Transitional provision

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- (1) Subject to this clause, the amendments made to the *Public Finance and Audit Act 1987* by sections 5 to 11 (inclusive) of this Act—
- (a) extend to any audit or examination in progress at the time of the commencement of this Act; and
- (b) may apply with respect to any matter or conduct in existence or undertaken before the commencement of this Act.
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- (2) Any proceedings calling into question or challenging an act or omission of the Auditor-General occurring before the commencement of this Act in connection, or purported connection, with the performance or exercise of a function or power associated with an examination must be commenced within 28 days after the commencement of this Act.
- (3) The amendment made by section 8(5) of this Act only applies prospectively.

2—Report on operation of amendments

The Treasurer must, within 6 sitting days after the second anniversary of the date of commencement of this Act, cause a report on the operation of the principal Act as amended by this Act to be laid before both Houses of Parliament.